SUPREME COURT OF THE UNITED STATES.

No. 745.—October Term, 1918.

Standard Varnish Works. *vs.* Steamship "Bris"; Rederiaktiebolaget, Claimant.	On Certificate from the United States Circuit Court of Appeals for the Second Circuit.

[January 13, 1919.]

Mr. Justice McKenna delivered the opinion of the Court.

This case was submitted with Nos. 449 and 450 and No. 479, being a suit in admiralty, as they were, to recover prepaid freight upon a shipment of articles of merchandise which were not carried to destination, the carriage having been prevented by action of the Government. Judgment was rendered for libelant and the case taken to the Circuit Court of Appeals.

The case is here on certificate from that court, induced, as the court recites, by its decision in the case of *International Paper Company* v. *The Schooner "Gracie D. Chambers"* (No. 479), to review which a certiorari has been granted by this court.

The facts as certified are these:

"On August 17, 1917, varnish belonging to libelant was shipped by it in the port of New York for Gothenburg, Sweden, upon the steamship Bris, consigned to the Allmanna Svenska Elektriska A. B. Westeras, and the agents for said ship thereupon delivered to libelant a bill of lading, of which a copy is annexed hereto, which formed a contract between libelant and claimant in reference to said goods. Particular reference is made to Clause 6, Clause 7 and the next to last clause of the bill of lading. The libelant paid in advance the freight mentioned in said bill of lading. At the time of said shipment, shippers were required to obtain export licenses from the British Government on cargo of this class, and were also required by the United States Statutes to obtain export licenses from the United States Government in connection with such articles as the President should, by proclamation, designate. At the time that said shipment was made the President had designated certain articles as to which licenses must be thus procured when destined for Gothenburg, Sweden, but varnish was not included among them. At the time of ship-

ment, the libelant presented a license which it had procured from the British Government. On August 27th, 1917, the President made a further proclamation, effective August 30th, 1917, whereby shippers of varnish and all other cargo destined for Gothenburg, Sweden, were required to procure licenses before the same could be exported. Th libelant threupon made application for such a license, and the claimant held its vessel in port until October 8th, to see if such licenses could be procured, before beginning the discharge of the cargo. Unless shipments were accompanied by the aforesaid licenses they were not allowed by the men-of-war belonging to the Allies to proceed to destination. On or about October 8th the United States, acting through the Exports Administrative Board, refused the application for a license to transport the goods mentioned in the libel, and other cargo destined for Gothenburg, and claimant thereupon began to unload the cargo of the Bris and concluded the discharge on October 22d, 1917. The claimant continued ready and willing to carry said cargo forward if a license therefor were obtained by libelant. The libelant took redelivery of the cargo at the port of shipment and made a demand upon the claimant that the claimant should return the freight paid, which demand was refused. The question aforesaid is as follows:

"1. Did the bill of lading contract justify the carrier, under the facts stated, in refusing to refund the prepaid freight?"

Clause 6 of the bill of lading is as follows: ". . . Prepaid freight is to be considered as earned on shipment of the goods and is to be retained by the vessel's owners, vessel or cargo lost or not lost, or if there be a forced interruption or abandonment of the voyage at a port of distress or elsewhere; . . ." The material parts of Clause 7 are as follows: "Also, in case the ship shall be prevented from reaching her destination by . . . war . . . or the hostile act of any power", the master may wait until the impeding obstacle be removed "or discharge the goods into any depot or at any convenient port or bring her cargo back to port of shipment where the ship's responsibility shall cease . . ."

Clause 2 should be considered. It exempts the carrier from loss by certain causes or "by arrest and restraint of princes, rulers or people."

We think the case is within the principle of the decision of the cases submitted with it. In this case, however, it is urged that the clause relied on by the ship to justify the retention of the advance of freight does not contain the word "irrevocable" and that upon that word stress was put by the Circuit Court of Appeals and

presumably by this court. The word undoubtedly is one of intensity but its absence does not remove the meaning or intention of its associates. Their declaration is that "prepaid freight is to be considered as earned on shipment of the goods and is to be retained by the vessel's owners, vessel or cargo lost or not lost." The declaration is clear, and, in anxiety of purpose, uses some tautology. The words "prepaid freight is to be considered as earned" declare a completed right and carried the power of retention without the expression of the latter. And the expression of the right and the power cannot be put aside. Counsel, however, would make them purposeless and would consider the bill of lading as if they were not contained in it, and urges that the only effect of the refusal of clearance to the ship was the 'commercial frustration of the adventure' working a dissolution of the contract, absolving from performance but requiring the restitution of the payments that were made as the consideration of performance.

We are not insensible to the appealing force of the contentions nor to the strength of the argument advanced to support them, but the contract determines against them and the reasons for assigning to it that effect we have given in our opinions in the other cases.

We, therefore, answer the questions certified in the affirmative.

So ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.